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THE ACTION TAKEN UPON THE RECOMMENDATIONS MADE IN THE REFORMS ENQUIRY COMMITTEE'S REPORT.

Memorandum presented to the Indian Statutory Commission by the Government of India on the subject of THE ACTION TAKEN UPON THE RECOMMENDATIONS MADE IN THE REFORMS ENQUIRY COMMITTEE'S REPORT.

Preliminary Note.

The Reforms Enquiry Committee's Report consists of two documents, the Majority Report signed by the Hon'ble Sir Alexander Muddiman, the Hon'ble Sir Muhammad Shafi, the Maharajadhiraja Sir Bijoy Chand Mahtab Bahadur of Burdwan, the Hon'ble Sir Arthur Froom and Sir Henry Moncrieff-Smith ; and the Minority Report signed by Sir Tej Bahadur Sapru, Sir Sivaswami Aiyer, Mr. Jinnah and Dr. Paranjpye. The Majority made forty-six separate recommendations, of which a summary is given in pages 106 to 114 of the Report. The Minority took the view that Dyarchy had failed and observed that they did not think that the amendments suggested by the Majority in their Report would afford valuable training towards responsible government, or would provide any solution of difficulties which the Minority discussed in their chapter on political conditions, or that they would strengthen the position of the Provincial Governments in relation to their legislatures or of the Central Government in relation to the Assembly. They suggested that the question at issue was whether the constitution should not be put on a permanent basis, with provisions for automatic progress in the future. They did however express views on most of the detailed recommendations made by the Majority, and in their remarks under head (3) on page 188 themselves made a definite recommendation for the deletion of the words " or interests " in section 67B of the Government of India Act.

The arrangement of the material in this memorandum.

2. The material in this memorandum is arranged as follows. First there is given an abstract summary of the action taken on each of the recommendations of the Majority following the same serial order as that adopted in pages 106 to 114 of the Report. Each recommendation is then separately stated, and the action taken upon it discussed. No action was taken upon the suggestion of the Minority for the deletion of the words. " or interests " from section 67B of the Government of India Act.

Abstract of the action taken upon each of the recommendations made by the majority of the Reforms Enquiry Committee.

Recommendation no. 1.—The position remains unchanged.

Recommendation no. 2.—Not accepted.

Recommendation no. 3.—Not accepted.

Recommendation no. 4.—Reserved for consideration by the Statutory Commission.

Recommendation no. 5.—Accepted. Parliamentary legislation to amend sections 63E and 80B of the Act is awaited.

Recommendation no. 6.—An official motion to give effect to this recommendation was adopted by the Council of State on the 16th September 1925. A motion in the same terms was twice moved and twice adjourned in the second Assembly. It has not since been moved in the present Assembly.

Recommendation no. 7.—There has been a separation of railway from general finance, but no change has yet been made in the date from which the railway year should begin for budget purposes.

Recommendation no. 8.—Accepted, and the Electoral Rules amended on the 26th April 1926.

Recommendation no. 9.—Accepted, and the Electoral Rules amended on the 26th April 1926.

Recommendation no. 10.—In view of the present constitution of the Assembly it has been decided to take no present action on this recommendation which would involve an amendment of the statute.

Recommendation no. 11.—Accepted so far as it relates to particular Bills, and not to particular classes of Bills. Parliamentary legislation to amend section 63A and section 63B is awaited.

Recommendation no. 12.—Accepted, and the Electoral Rules amended on the 23rd January 1925.

Recommendation no. 13.—Accepted. The Legislative Members Exemption Act, 1925 (Act XXIII of 1925).

Recommendation no. 14.—Accepted by the Government of India, but a Bill described as the Legislative Bodies Corrupt Practices Bill, designed to give effect to the recommendation lapsed when the second Assembly was dissolved, and has not since been introduced in the present Assembly.

Recommendation no. 15.—It has been decided to take no action on this recommendation pending the present enquiry of the Statutory Commission.

Recommendation no. 16.—It has been decided that no amendment should be made either in Devolution Rule 10 or in the Instrument of Instructions or elsewhere for the purpose of giving effect to this recommendation.

Recommendation no. 17.—Accepted. Parliamentary legislation to amend section 52 is awaited.

Recommendation no. 18.—It has been decided to take no action on this recommendation pending the present enquiry of the Statutory Commission.

Recommendation no. 19.—Accepted. The Legislative Council Rules were amended on the 27th October 1926.

Recommendation no. 20—

(*a*) It has been decided to take no action on this part of the recommendation pending the present enquiry of the Statutory Commission.

(*b*) This part of the recommendation is substantially met by the rules in force in several provinces.

Recommendation no. 21.—Accepted. The Transferred Subjects (Temporary Administration) Rules were amended on the 29th April 1926.

Recommendation no. 22.—Accepted. Parliamentary legislation to amend section 52 is awaited.

Recommendation no. 23—

(*a*) Accepted. Schedule II to the Devolution Rules was amended on the 29th April 1926.

(*b*) It has been decided to take no action on this recommendation pending the present enquiry by the Statutory Commission.

(*c*) Accepted. Schedule II to the Devolution Rules was amended on the 29th April 1926.

(*d*) Not accepted.

Recommendation no. 24—

(*a*) Partially accepted. Schedule II to the Devolution Rules was amended on the 16th July 1926.

(*b*) Not accepted.

(*c*) Accepted by rules notified on the 7th January 1926.

(*d*) Not accepted.

Recommendation no. 25.—A formal recommendation upon which no action has yet been taken.

Recommendation no. 26.—Accepted. Parliamentary legislation to amend section 80-A is awaited.

Recommendation no. 27.—(1) and (11) accepted. Part II of Schedule I and Schedule II to the Devolution Rules were amended on the 28th April 1926.

Recommendation no. 28.—It was found on examination that no amendment of the Legislative Rules was necessary to give effect to this recommendation, which is covered by the existing law.

Recommendation no. 29.—Partially accepted. Parliamentary legislation to amend sections 67 and 81A is awaited.

Recommendation no. 30—

(*a*) and (*b*) Accepted. The Legislative Council Rules were amended on the 27th October 1926.

(*c*) Awaits the amendment of section 52.

Recommendation no. 31.—Accepted. The Indian Legislative Rules and the Provincial Legislative Council Rules were amended on the 27th April 1926.

Recommendation no. 32.—Accepted. The Electoral Rules were amended on the 29th April 1926.

Recommendation no. 33 —Accepted in a modified form. The Electoral Rules were amended on the 8th July 1926.

Recommendation no. 34.—By notifications dated the 9th August 1926 eight more seats for the depressed classes were provided by nomination distributed between Madras, Bombay, and the Central Provinces.

Recommendation no. 35.—By notifications dated the 9th August 1926 four more seats for labour were provided by nomination distributed between Bombay, the Punjab and the Central Provinces.

Recommendation no. 36.—The present position in regard to the Meston Settlement is explained in a memorandum separately presented to the Commission.

Recommendation no. 37.—The principle approved by the Government of India, and local Governments recommended to give effect to it to the fullest extent possible.

Recommendation no. 38.—Accepted. The Devolution Rules were amended on the 15th July 1926.

Recommendation no. 39.—Accepted. The Devolution Rules were amended on the 15th July 1926.

Recommendation no. 40.—Not accepted.

Recommendation no. 41.—The principle endorsed by the Government of India and the local Governments informed to that effect.

Recommendation no. 42.—No action was found necessary on this recommendation.

Recommendation no. 43.—A memorandum describing the position in the matter of the separation of accounts from audit has been separately presented to the Commission.

Recommendations nos. 44, 45 and 46.—These recommendations are in general terms. A memorandum on the position of the Services has been separately presented to the Commission.

L70HD.

THE SECRETARY OF STATE.

I. The control of the Secretary of State and of the Secretary of State in Council over the official governments in India in cases affecting purely Indian interests should be relaxed and efforts should be directed towards establishing a practice in this respect. (Paragraph 123).

The comments made by the Minority on this recommendation will be found under heads (26) and (27) at pages 191 and 192, which should be read with Chapter IX of the Minority Report.

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1. The difference between the Majority and the Minority was briefly to the following effect. The Majority considered that, even if the constitutional powers of the Secretary of State were, as they must be, retained unimpaired, it was still possible for his control to be relaxed, either as a result of conventions somewhat on the lines of the Fiscal Convention, or in the practice of administration, by abstention on his part from interference, in cases affecting purely Indian interests. In finance and service matters, the Majority considered that such abstention might be confirmed by a definite delegation of powers by rule. The Majority held that the relaxation of control on these lines would supply a most important channel for constitutional advance within the scope of the Act.

The Minority were rather more sceptical, and took the view that consistently with the Secretary of State's responsibility to Parliament, any divestment of his powers of control over central or over provincial reserved subjects was out of the question, and any relaxation of their use by definite delegations of power by rule must be of a very limited character. The Minority recognised the difficulty of defining "purely Indian interests"; and, in short, they were of opinion that, within the scope of the Act, to which they were bound by their terms of reference, there was little or no room for any material alteration in the exercise by the Secretary of State of his powers of control and that any modifications which might be made, whether by convention or otherwise, would necessarily fall very far short of being in any sense a genuine constitutional advance.

2. Though based upon remarks made by the Joint Select Committee on clause 33 of the Government of India Bill, the recommendation of the Majority did not expressly include any criterion of agreement between the executive governments in India and their legislatures as the basis for delegation of control, and their recommendation appears to have been mainly directed towards those powers of executive governments which would probably come only rarely before the legislature. Any extended application of the principle referred to in the Joint Select Committee's comments on clause 33, omitting agreement between the executive and the legislature would involve obvious constitutional difficulty, while the Secretary of State remains responsible to Parliament and so long as the Central Government remains without constitutional responsibility within India. The difference between matters in which the legislatures were concerned and those which would not come before the legislatures at all is therefore fundamental.

In matters in which the legislatures are concerned, the Majority may be assumed not to have intended to proceed beyond the principle expressed in the remarks of the Joint Select Committee of Parliament on clause 33 of the Government of India Bill, which they themselves cited; but further steps in the direction of establishing conventions similar to the Fiscal Convention are hampered, in the first place, by the difficulty, mentioned by the Minority, of defining the term "purely Indian interests", and, secondly, by the difficulty of arriving at a suitable definition of "agreement between the legislature and the executive". For example, it might not be appropriate to regard the legislature and the executive as being in agreement when the latter accepts a resolution of the former for reasons of general policy, although objecting to it on its merits.

In matters which would not come before the legislature, the most that can be expected under the present constitution is that there should be no interference by the Secretary of State in the details of administration, and that in larger matters in which he cannot expect that Parliament would allow him to delegate his authority or divest himself of his responsibility, the exercise of his powers to superintend, direct and control, should be made with full consideration for the letter and the spirit of the preamble to the Government of India Act.

3. In the light of these considerations, the recommendation of the Majority is seen to raise issues of very varying importance, and to suggest action of three different kinds.

The constitutional implications in the case of matters coming before the Legislature have prevented the Government of India from seeking to establish any convention, other than the Fiscal Convention, based on concurrence of authorities in India.

In other matters, in regard to financial administration, the suggestion of the Committee for delegation of powers by rule has not been pursued; but in regard to service matters, in a separate connection, those delegations have been carried out to which reference is made in the memorandum on the services separately presented to the Commission.

The further suggestion that in other matters of administration a practice of non-interference by the Secretary of State in affairs of purely Indian interest was recognised by the Committee themselves as raising difficulties of definition. The problem is largely one of administrative convenience, and has been examined in that light. But no definite suggestions have been made to the Secretary of State.

THE GOVERNMENT OF INDIA.

The Executive.

2. The Governor-General and the other high officials mentioned in sub-section (1) of section 110 of the Government of India Act should be exempt from the jurisdiction of all courts and not merely from the original jurisdiction of the High Courts. (Paragraph 91).

This recommendation was supported by the Minority—*vide* head (30) at page 192.

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1. The Majority stated that their reason for making this recommendation was that if the immunity enjoyed by the Governor General and other high officials is to be maintained, it should be made complete, and the jurisdiction of all Courts should be barred in respect of the matters. The recommendation was one of a number of recommendations arrived at as a result of an examination of the subject of powers, privileges and immunities by a sub-committee consisting of Sir Muhammad Shafi, Sir Tej Bahadur Sapru, Sir Henry Moncrieff-Smith and Mr. Jinnah. The recommendation of the sub-committee was unanimous.

2. As the Committee recognised, their suggestion involves an amendment of section 110 of the Government of India Act, and it may be useful in the first place to indicate the earlier history of the statutory provision now expressed in that section The origin of that part of section 110 which relates to civil jurisdiction is to be found in the conflict between the Executive Government and the Supreme Court at Calcutta between the years 1773 and 1780 in the course of which the Court, by the issue of process of various kinds, brought the machinery of the Government to something like a deadlock. In 1916 the provision in the law was amended without objection so as to cover Lieutenant-Governors and the Members of their Executive Councils.

The draft Government of India Bill, 1919, contained provision to extend to Ministers the protection afforded by section 110. This extension to Ministers was questioned in the House of Lords by Lord Sydenham who relied upon the authority of Professor Berriedale Keith who had written a letter to the *Times* (published the 1st December 1919) voicing his objections : Sir Edward Chamier had replied to Professor Keith's arguments, but Professor Keith maintained his objections. In the appendix attached a copy is given of this correspondence. In the House of Lords Professor Keith's argument that it is an essential principle where responsible Government is introduced that every Minister should be amenable to the Law Courts for his actions was employed by Lord Sydenham who described the suggested protection as unconstitutional. In reply Lord Sinha stated that the objections appeared to him to be based on a misapprehension. He explained the earlier history of section 110 and drew attention to the fact that the Supreme Court existed only in Calcutta, Bombay and Madras, and is now represented by the original jurisdiction of those three High Courts only. The exemption given to high officials protected by section 110 was merely that they should not be liable to be arrested or imprisoned under the original jurisdiction of those three High Courts. An Indian Minister should not be denied the very limited exemption enjoyed by Indian Members of an Executive Council. Lord Sydenham's amendment was negatived without a division.

3. Though it can be argued that the present position is anomalous in that the immunity conferred applies only to the original jurisdiction of the High Courts of Judicature, it was felt that it would not be an easy proposition to defend that because it was found necessary, for reasons which have now little more than historical interest, early in the latter half of the 18th century to exempt the Governor-General and his Council from the jurisdiction of the Supreme Court, and because logic has from time to time demanded the extension of an analogous privilege to certain other high officials as their posts were created, it is therefore necessary now to alter the whole character of the judicial exemption which is conferred by a section which might be described as a relic of the historic past.

On these grounds this recommendation has not been accepted.

APPENDIX TO THE NOTE ON RECOMMENDATION NO. 2.

The "Times", Monday, December 1, 1919.

INDIAN REFORM.

MINISTERS AND THE COURTS.

To

The Editor of the "Times".

SIR,

While the House of Commons cannot be expected to undertake a general revision of the Government of India Bill as reported from the Joint Select Committee, there is one point of the highest constitutional importance, which, banished as it is to the seclusion of an amendment in Part II of Schedule III of the Bill, seems to have escaped consideration by the Committee, though attention was called to it in my Minority Report on the Home Administration of Indian Affairs (Cmd. 207, P. 56).

Under this amendment to section 110 of the Government of India Act, 1915, there is conferred on Ministers appointed under the new measure absolute immunity from "the original jurisdiction of any High Court by reason of anything counselled, ordered, or done by any of them in his public capacity only", and from "the original Criminal Jurisdiction of any High Court in respect of any offence not being treason or felony". I cannot believe that the Members of the Select Committee, or of the House of Commons, can really contemplate so grave a violation of the rule of law, which is the indispensible basis of responsible or representative Government or that, if they understood the question, they would consent thus to negative the right, whether of Indian or of European British subjects, to resort to the Court in respect of illegal acts ordered by Ministers.

Presumably the proposal is made because members of executive Councils, as well as Governors and Lieutenant-Governors, are accorded this exemption. Without discussing whether this state of affairs is justifiable, it must be pointed out that the position of Ministers and that of Executive Councillors is totally different. Not only are the latter under strict official supervision and control, but they are subject to proceedings for oppression or breach of duty in the High Court of England; an Indian Minister will, indeed, be subject to the same liability, but whereas a European Civil servant is normally certain to become liable to that jurisdiction by returning to England, an Indian Minister will have no inducement ever to bring himself within the sphere of operation of the High Court.

Nothing, I think, can be more fatal to the orderly development of responsible Government in India than the divorce of Ministerial power from legal responsibility, and I venture to hope that I may have your support in calling attention to this defect in the Bill with a view to the deletion of the proposed addition to section 110 of the Act of 1915.

I am,

SIR,

Your obedient servant,

A. BERRIEDALE KEITH.

The University,
Edinburgh,
November 28.

The "Times", Wednesday, December 3, 1919.

INDIAN REFORM.

MINISTERS AND THE COURTS.

To

The Editor of the "Times".

SIR,

In your issue of to-day Professor A. B. Keith calls attention to the amendment of section 110 of the Government of India Act, 1915, proposed by the Bill which is now before Parliament. He describes the point as one of the highest constitutional importance,

and suggests that the amendment will negative the right of subjects of the Crown to resort to the Courts in respect of illegal acts ordered by Ministers.

The scope of section 110 is much more limited than would at first sight appear.

As regards criminal jurisdiction, it leaves untouched the jurisdiction of the High Court in all cases of treason or felony. It also leaves untouched the jurisdiction of magistrates who try what are called in English law misdemeanours. Nor does it touch the criminal appellate jurisdiction of any High Court. It refers only to the original criminal jurisdiction of a High Court established by letters patent, and therefore leaves untouched the jurisdiction of Courts of Session in the Muffasil, which except in the case of European British subjects, have power to try all offences, however serious, including what are known in England as felonies. It is unlikely that any Ministers will be Europeans.

The origin of that part of section 110 which relates to civil jurisdiction is to be found in the conflicts between the Executive Government and the Supreme Court at Calcutta between 1773 and 1780, in the course of which the Court, by the issue of processes of various kinds, brought the machinery of the Government to something like a deadlock. Of the six High Courts in India, only three have ordinary original civil jurisdiction. The remaining three and the High Courts not established by letters patent, can try ordinary original civil suits only when they are transferred from other Courts. The section certainly prevents the High Courts in the three Presidency towns from entertaining suits and issuing writs, injunctions, etc., against certain high officials in certain cases, but during a period of about 140 years no serious inconvenience appears to have resulted from the provisions of the section, and so recently as 1916 it was amended without objection so as to cover Lieutenant-Governors and the members of their Executive Councils.

Professor Keith suggests that the amendment will place Ministers in a more favourable position than members of Executive Councils, but in view of the provision of section 127 (which is too long to quote here), I venture to think that that is not so.

I suggest that it would be unwise to eliminate at this stage a provision which does no more than place Ministers and members of Executive Councils in the same position as regards amenability to the Courts.

I am,

SIR,

Your obedient servant,

E. CHAMIER,

India Office,

December, 1.

The "Times", Monday, December 8, 1919.

THE GOVERNMENT OF INDIA BILL.

MINISTERS AND IMMUNITY.

To

The Editor of the "Times".

SIR,

That the India Office should defend, as is done in your issue of yesterday, the draftsmanship which extends in the Government of India Bill to Ministers immunities granted to the Governor-General, Governors, Lieutenant-Governors, and Executive Councillors is natural but Sir E. Chamier's reply to my criticism reveals how far he is from comprehending the vital character of the change in the Government of India brought about by Mr. Montagu's Bill.

In this country and in the self-governing Dominions it is an essential principle that every Minister is amenable to the Law Courts for his actions, and it is owing to this admirable principle that British subjects in these countries are secure in person and property against Ministerial wrongdoing. When the office of Minister is created in India, every consideration of precedent and principle demands that he should, as regards the Courts, be placed in the same position as every other holder of Ministerial office in the British Empire. Instead of this, the Bill places Ministers in the position of freedom from control which was first granted to Warren Hastings. Comment on such a proposal in 1919 seems needless.

But, I must repeat, Ministers will be even better off than Warren Hastings, who desired to return to England, and so brought himself within risk of retribution, and than Executive Councillors, who if European, suffer from the same disability. In the case of Ministers the safeguards of (1) control by official superiors and ultimately Parliament and (2) possibility of action in the High Court of England are non-existent ; the proposed extension of immunity to Ministers is therefore wholly unjustifiable, and is explicable only on the theory that it slipped in, as I apprehend was the case, as a consequential amendment which unhappily the India Office is not now willing to disavow.

I am,

SIR,

Your obedient servant,

A. BERRIEDALE KEITH.

The University,

Edinburgh,

December 4.

THE GOVERNMENT OF INDIA.

The Executive.

13. The powers of the Governor-General in Council to secure by a declaration that the development of a particular industry shall be a central subject should be modified so as to relax the existing restriction and allow the power to be exercised with the concurrence of the local Government or Governments concerned. (Paragraph 95).

No remarks by the Minority.

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1. It was felt that this recommendation, if accepted, would cause difficulty, should any local Government not agree in a declaration proposed to be made by the Governor-General in Council. For example, if it were decided to give bounties to encourage the production of a particular material, the development of such production must be made a central subject before bounties can be given. If any local Government objected to the declaration, after the proposed amendment had been made, then the subject could not be made a central subject so far as that province is concerned, and accordingly the whole object of the declaration might be defeated. The Committee apparently assumed that the amendment would be in furtherance of provincialisation, but it clearly could have little influence in that respect.

2. In view of these considerations this recommendation has not been accepted.

THE GOVERNMENT OF INDIA.

The Indian Legislature.

4. The Courts should be barred from premature interference with the Presidents of the two Chambers in regard to action proposed to be taken in either Chamber. The recommendation applies to the Presidents of the Legislative Councils also. (Paragraph 91).

The Minority did not object, *vide* head (30) at page 192.

This recommendation is supported by the Government of India, and its scope extended, but as the matter raised is one of some constitutional importance it has been reserved for consideration by the Statutory Commission to whom a separate memorandum on the subject has been presented.

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5. The elected President of the Legislative Assembly should not be required to vacate his seat as a member of the Assembly on his acceptance of that office. The recommendation extends to the elected Deputy President of the Assembly, to elected Presidents and Deputy Presidents of the provincial councils and also to Council Secretaries. (Paragraph 76).

The Minority have no objection, *vide* head (10) at page 169.

This recommendation has been accepted by the Government of India, and the Secretary of State has agreed that Parliamentary legislation to give effect to it by the amendment of sections 63-E. and 80-B. of the Act may be undertaken at a convenient opportunity.

THE GOVERNMENT OF INDIA.

THE INDIAN LEGISLATURE.

6. Bills affecting Hindu or Muhammadan law should be referred, after leave for introduction has been given, to two standing committees. The members of the standing committee should consist mainly of members of the communities concerned, but should include experts in Hindu or Muhammadan law, as the case may be, and also representatives both of the reforming and of the orthodox sections of the two communities. They should be appointed by a Committee of Selection. Before any arrangements are made on these lines, the two chambers of the Indian Legislature should, however, be consulted. (Paragraph 120).

The Minority (page 193) appreciated the importance of the subject ; but thought that section 67 (2) provides sufficient safeguards at present. They recognised that it is not easy at all times to draw a sharp line between social and religious usages ; and understood the spirit of caution which led the Majority to recommend the appointment of Standing Committees, but did not feel justified in committing themselves more particularly because they thought the subject had not been sifted in the manner in which it might have been. They thought that the importance of the subject should be borne in mind when the Constitution is revised.

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1. On the 16th September 1925 the Home Secretary on behalf of the Government of India moved the following resolution in the Council of State :—

" This Council recommends to the Governor-General in Council that in order to give effect to the recommendation in paragraph 120 of the report of the Reforms Enquiry Committee the Indian Legislative Rules and the Standing Orders of this House be amended so as to provide as follows :—

" (*a*) Two Standing Committees one to deal with Bills relating to Hindu law and the other with Bills relating to Muhammadan law shall be appointed ;"

" (*b*) appointments to these Committees shall be made by a Committee of Selection the members of which shall be appointed at one of the first meetings of the Council to be held in each year and should hold office for one year from the date of nomination ; "

" (*c*) the Committee of Selection shall consist of the President, and the Leader of the House supplemented up to a total number of six members on a motion moved by the Leader of the House so as to represent the main divisions of opinion in this House ;"

" (*d*) the Standing Committee for Bills relating to Hindu law shall consist of the Hon'ble the Home Member, the Hon'ble the Law Member, if they are members of the Council, and 15 Hindu members nominated by the Committee of Selection so as to include persons well versed in Hindu law and representatives both of the orthodox and reforming sections of the Hindu community ;"

" (*e*) the constitution of the Standing Committee for Muhammadan law shall be similar to that of the Committee on Hindu law, except for the substitution of 10 Muhammadan members for the 15 Hindu members ;"

" (*f*) the members of each Standing Committee shall hold office for one year, but may be re-nominated by the Committee of Selection in successive years ;"

" (*g*) a Bill which has been referred to the Standing or a special Select Committee in one House shall not be referred to the Standing Committee or a Special Select Committee in the other House ;"

" (*h*) as soon as leave is given to introduce a Bill other than a Government Bill, and subject to paragraph (*g*) as soon as a Bill other than a Government Bill which has been passed by the other House is laid on the table of the House, if the Bill is certified by the President to relate to Hindu or Muhammadan law, it shall be referred to the Standing Committee concerned without further motion ;"

" (*i*) the Standing Committee shall have power to examine witnesses and to circulate a Bill, but when it directs circulation the fact shall be reported to the Council ;"

"(j) the further procedure in the Council after the report of the Standing Committee has been received shall be the same as the procedure on receipt of the report of a Select Committee."

Some objection was raised to the creation of what were described as communal departments in the legislature ; the omission of Government bills from the scope of clause (*h*) was criticised ; but on an assurance being given that all suggestions in matters of detail would be considered, the motion was adopted without a division.

2. A motion in the same terms was moved by the Home Member in the Legislative Assembly on the 17th September 1925, but was adjourned till the next session on an amendment moved by Diwan Bahadur M. Ramachandra Rao. It was again moved on the 18th August 1926, and again adjourned on an amendment moved by Mr. M. A. Jinnah who wished the matter to stand over for the new Assembly. The motion has not since been moved in the new Assembly.

THE GOVERNMENT OF INDIA.

The Indian Legislature.

7. Power should be taken to enable the Government of India to prescribe the date on which the railway year shall begin for budget purposes, and also to present the railway budget separately from the general budget. (Paragraph 121).

The Minority made no recommendation as they thought that the matter required further examination—*vide* head (25) at page 191.

No decision has yet been reached with regard to the first part of this recommendation. The change suggested in the second part of the recommendation has been effected. Reference on this point is invited to the comments in paragraph 13 of the Sketch of the Operation of the Constitution in the Central Government on the subject of the separation by convention of railway and general finance.

THE GOVERNMENT OF INDIA.

The Indian Legislature.

8. The bar against women being registered as electors for the Delhi and Ajmer-Merwara constituencies should be removable by the passing of a resolution after due notice in the Assembly. (Paragraph 66).

9. The bar against women being elected or nominated members of either chamber of the Indian legislature or of the Provincial Councils should be removable by the passing of resolutions after due notice in the chambers and the Councils. (Paragraph 67).

The Minority wished to go further and recommended the enfranchisement of women by rules, and also that they should have a right to stand for election—*vide* head 4 (*d*) at page 188.

The Majority considered that in the matter of women's franchise it would be desirable to adhere to the opinion expressed by the Joint Select Committee of Parliament on clause (7) of the Government of India Bill of 1919 that the admission of women to the franchise should be settled in accordance with the wishes of Indians themselves as constitutionally expressed, that is to say, by resolution passed in the legislatures. In their comments on the draft electoral rules they stated that they thought it desirable to safeguard their original intention that the decision for each province should rest with the provincial legislature, and accordingly amended the draft rules to provide that a resolution of either Chamber of the Indian legislature in favour of enfranchising women as voters for that Chamber shall have effect in a province only if the province has itself already taken this step for its own Council.

Delhi and Ajmer-Merwara are represented by one seat each in the Legislative Assembly, but neither possesses a provincial Legislative Council. Hence recommendation no. 8 of the Reforms Enquiry Committee.

2. In the matter of the eligibility of women to sit as members of the various legislative bodies, the Majority considered that it would be in conformity with the dictum of the Joint Select Committee of Parliament to leave the decision to the legislatures and to provide in the Electoral Rules of each Provincial Council for the removal by resolution of the disqualification, and in the Electoral Rules of each Chamber of the Indian Legislature for the removal of the disqualification for a constituency in a province in which sex is not a disqualification for such membership.

3. The Government of India accepted recommendations 8 and 9 of the Majority of the Committee, and, with the sanction of the Secretary of State, the Electoral Rules were amended accordingly by notifications dated the 26th April 1926.

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10. Special representation for factory labourers in the Legislative Assembly should be provided for, if local Governments can make arrangements, by election, if not by nomination. (Paragraph 64).

Provincial Legislatures.

34. The representation of the depressed classes in the provincial Councils should be increased, and the local Governments should be asked to formulate proposals. The representation should be by election, if local Governments are prepared to recommend a system of election. (Paragraph 64).

35. The representation of factory labourers in the provincial councils should be increased, and the local Governments should be asked to formulate proposals. The representation should be by election if possible. (Paragraph 64).

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1. It will be convenient to group these three recommendations together for the purpose of discussing the action taken on them.

In paragraph 63 of their report the Majority stated that they were unable to recommend any general modification of the franchise in either direction, either by extension or restriction. They affirmed the principle that the franchise should be as low as possible, provided that the electors have a proper appreciation of their duties and responsibilities in its exercise ; but stated that the capacity of the elector was at present, so they believed, mainly confined to a capacity to choose between the personal qualities of two or more candidates. If that was so, then the Majority considered that there could be no doubt that a general widening of the franchise, not accompanied by a corresponding increase in the number of seats would enhance the difficulty, because it would largely decrease the proportion of the electors acquainted with any of the candidates ; for that reason they were not prepared to recommend any great increase in the number of seats in the various legislative bodies.

To this general proposition they made certain exceptions, which they discussed in paragraph 64, in favour of the increased representation (*a*) of factory labour and (*b*) of the depressed classes. The Majority expressed their views in general terms, but made no precise recommendations as to the additional representation which should be granted, since they considered that each local Government should be asked to formulate proposals.

2. The Minority discussed the franchise in Chapter VIII of their report and expressed the opinion that in every province the franchise should be carefully examined, and, wherever it admits of lowering, it should be lowered so as to secure the enfranchisement of a substantially large number of people.

With reference to the representation of the depressed and working classes they stated that the correct principle to follow would be to lower the franchise so as to give them a chance through the open door of election in general electorates ; but where practical considerations pointed to a different conclusion, they suggested that for the next few years only special constituencies might be formed for them. The Minority cited the opinion of their colleague, Dr. Paranjpye, that it should not be difficult to secure the representation of the depressed and working classes in the Bombay Presidency by election from three or four districts.

Similarly as regards factory labour the Minority favoured their representation by election. They thought that, though still disorganized, labour was showing distinct signs of beginning to organise itself in urban areas.

3. The views both of the Majority and of the Minority were referred to the provincial Governments and the whole question of the representation of factory labour and of the depressed classes was brought under careful examination. It will be noticed that the Majority opposed a general extension of the franchise, and gave prominence to opinions that the existing electorates are inexperienced, if not irresponsible. The Minority were reluctant to form special electorates and asserted the principle that the depressed and working classes should be given their chance through the open door of election by a widening of the general electorate. Both sections of the Committee were prepared, in favour of the depressed classes and factory labourers, to abandon these general propositions ; but neither section advanced any reason for making an exception to their principles save their belief that the need for further representation of these classes is generally

recognised. There is no clear line of distinction between the castes which could be defined as depressed and other castes of the agricultural community which are almost equally backward and of which very few members have votes, and it has been urged that politically the depressed classes are part of the greater body of agricultural tenants and labourers, already represented in the general electorates. Similar difficulty might be met in attempting to define factory labourers in a country where those who work in factories still retain their connection with the land. At the same time while factory workers are unorganised and still little differentiated in aim or outlook from the general population, it would be difficult to justify the creation of any artificial means of enabling them to provide themselves with representatives of their own in the legislatures.

By reason of the difficulties involved the local Governments were unanimous against giving either labour or the depressed classes increased representation by election. As a result of the examination made of the question an addition was made of the following numbers of nominated seats in the Legislative Councils named—

Council.	*Additional seats for* Labour.	Depressed classes.
Madras	.. ..	5
Bombay	.. 2	1
Punjab	.. 1	..
Central Provinces	.. 1	2
	4	8

With these additions, adopted by notifications issued on the 9th August 1926, the present provision for the representation by nomination of labour and depressed classes in the various Councils stands as follows :—

Council.	*Seats for* Labour.	Depressed classes.
Madras	.. ..	10
Bombay	.. 3	2
Bengal	.. 2	1
United Provinces	.. ..	1
Punjab	.. 1	..
Bihar and Orissa	.. 1	2
Burma	.. 1	..
Central Provinces ..	.. 1	4
Assam	.. 1	..
	10	20

In the Legislative Assembly, until the elected seats were increased, the number of nominated members could not be increased above the existing figure. This in itself was sufficient to prevent action being taken to obtain increased representation for labour in the Assembly by nomination.

THE GOVERNMENT OF INDIA.

The Indian Legislature.

11. The Governor-General should have power to nominate persons whether officials or non-officials to be members of either Chamber of the Indian Legislature as experts for particular bills or particular classes of bills. (Paragraphs 73 and 120).

The Minority did not specifically refer to this recommendation of the Majority, but in their remarks under head (9) at page 189 they objected to the retention of the official bloc, and in their remarks under head (34) at page 193 they stated that they entirely disapprove the principle of nomination of non-officials except for specified minorities in whose case it is difficult to constitute electorates. The Minority may be understood therefore not to have supported this recommendation.

1. The Government of India have accepted the Committee's recommendation so far as it relates to the nomination of experts for particular Bills, but not in regard to the nomination of experts for particular classes of Bills. There seemed good ground for the belief expressed by the Committee that provision for the nomination of experts for particular Bills in the Central Legislature had been omitted by oversight, since such power was possessed in regard to the old Legislative Councils and was conferred by the Act of 1919 in the case of Governors' Legislative Councils. Without the amendment suggested by the Committee the Government of India could not provide for the presence of non-official experts, and for official experts they could do so only by arranging for the frequent resignations of certain official members of the Central Legislature and the appointment of experts in their places. This course brought the official bloc into undesirable prominence, as the expert officer appointed to be a member of the legislative body concerned for a particular Bill must then be a member for all purposes with consequential dislocation of his normal work during the sitting of the legislature.

2. The second part of the Committee's proposals for the appointment of experts for particular classes of Bills was made in connection with their recommendation no. 6. It seemed to the Government of India to be an unnecessary refinement to have separate provisions for the nomination of experts for Bills and for classes of Bills, and that it would be sufficient to take power to appoint one expert for any particular Bill in the Council of State and not more than two experts for any particular Bill in the Legislative Assembly.

3. The Secretary of State has agreed to undertake Parliamentary legislation to amend sub-section (1) of section 63-A and sub-section (2) of section 63-B to give effect to this suggestion when a convient opportunity presents itself.

THE GOVERNMENT OF INDIA.

THE INDIAN LEGISLATURE.

12. The existing disqualification from being a member of either Chamber of the Indian Legislature, or of a provincial Council, which follows from a conviction by a criminal court should be modified—

(1) by increasing the period of sentence which constitutes a disqualification from six months to one year ; and

(2) by enabling it to be removed, subject to provisions to secure uniformity by orders of the local Government instead of only by pardon. (Paragraph 72).

The Minority (head 32, page 193) had no objection.

This recommendation was accepted by the Government of India and the necessary changes were made in the Electoral Rules by notifications dated the 23rd January 1925.

THE GOVERNMENT OF INDIA.

The Indian Legislature.

13. Members of all the legislative bodies constituted under the Act should be exempted from—

(1) serving as jurors or assessors, and

(2) arrest and imprisonment for civil causes during meetings of the legislatures in question, and for periods of a week before and after such meetings.

This recommendation should not be dealt with as a matter of privilege, but by amendment of or action under the ordinary law. (Paragraph 91).

The **Minority** had no objection. [Head (30) at page 192].

The Legislative Members Exemption Act 1925 (Act XXIII of 1925) giving effect to this recommendation by the amendment of section 320 of the Code of Criminal Procedure and section 135 of the Code of Civil Procedure, was passed by the Legislative Assembly on the 1st September 1925, and by the Council of State on the 7th September 1925.

THE GOVERNMENT OF INDIA.

THE INDIAN LEGISLATURE.

14. The corrupt influencing of votes within any of the legislative bodies by bribery, intimidation and the like should be made a penal offence, and this should not be dealt with at present as a question of privilege. (Paragraph 91).

The Minority had no objection, *vide* head (30) at page 92.

1. Under the law as it stands, though to bribe an elector is an offence, it is not an offence either to render a bribe to, or to receive a bribe by, a member of a legislature in India as an inducement to him to vote in a particular manner. On the other hand the intimidation of a legislator for that purpose is covered by sections 503, 506 and 507 of the Indian Penal Code. To give effect to the recommendation of the Committee, action is therefore required only in respect of bribery.

2. On the 25th August 1925 the Home Member introduced a Bill described as the Legislative Bodies Corrupt Practices Bill in the Legislative Assembly. In the Statement of Objects and Reasons attached to the Bill, attention was drawn to the recommendation of the Reforms Enquiry Committee. The Bill proposed to penalize—

(1) the offering of a bribe to a member of a legislature in connection with his functions as such ; and

(2) the receipt or demand by a member of a legislature of a bribe in connection with his functions as such.

The definition adopted for the offence followed that in section 171-B. of the Indian Penal Code in regard to the offence of bribing a voter at an election, and in order to prevent vexatious prosecutions the offence was included by the provisions of the Bill in section 196 of the Code of Criminal Procedure.

3. On the 3rd September 1925 the Home Member moved that the Bill be taken into consideration ; he stated however that he was prepared to accept a motion, of which notice had been given, for the reference of the Bill to a Select Committee; what he desired at that stage was to obtain the endorsement of the House to the principle of the Bill. The motion for reference to a Select Committee moved by Mr. Chartres was opposed by Diwan Bahadur M. Ramachandra Rao, on the ground that before the Assembly was committed to the principle of the Bill, the views of the provincial Governments and of the provincial legislatures should first be obtained. The Home Member explained that he was prepared to obtain the opinions of the local Governments, executively, before the Select Committee met. Pandit Moti Lal Nehru, who had been named as a member of the Select Committee, stated that the principle of the Bill amounted only to this, that corruption in a member of the legislature should be made an offence and punishable. While he must decline to pledge himself either to the procedure or to the definitions given in the Bill, he was prepared to accept the principle within the limits which he had stated. The Home Member informed the House that he was merely asking it to affirm the principle that bribery of a member of a legislative body should be made punishable. The motion for the reference of the Bill to a Select Committee was then adopted without a division.

This was followed by a reference being made by the Government of India to the local Governments for an expression of their views. It was explained at the time that in proposing to penalise corruption in regard to members of the legislatures in India, the Bill followed precedents of the United States of America and of Canada.

4. The replies given by local Governments expressed substantial support to the Bill, but the reference led to debates in two Legislative Councils, namely those of Bombay and Madras.

The resolution in the Bombay Council was moved by Mr. Baptista on the 30th October 1925, and was to the effect that the Bill was unnecessary ; that it was detrimental to the dignity and independence of members of the legislative bodies; and that the same confidence should be reposed in the sense of honour of members of the Indian legislatures as in the Members of Parliament in Great Britain. In the course of the debate fears were expressed that the Bill, if it became law might be followed by false accusations, and objection was at the same time taken to the provision that the power to sanction a prosecution should rest with the local Government. On the other hand there was a considerable measure of support for the Bill, and Mr. Baptista's resolution was lost by 27 votes to 24.

The debate in the Madras Council was on a resolution moved by the Law Member of the Government of Madras on the 16th December 1925 to the effect that the Council should

accept the principle of the Bill introduced in the Assembly on the 25th August 1925. This resolution was discussed on the 18th December 1925, when an amendment was moved by Rao Bahadur C. V. S. Narasimha Raju in the following terms :—

" This Council accepts the principle of making punishable corruption on the part of legislative bodies in India in the execution of their duties, and considers

(1) that a committee of the legislative body concerned appointed by means of the single transferable vote of which the President of the legislative body concerned shall *ex-officio* be a Member and the President, and the Deputy President shall *ex-officio* be a Member shall be constituted a court of record to try the offences mentioned in the Bill;

(2) that the maximum punishment to which a person convicted of any such offence should be liable shall be expulsion from the House;

(3) that the previous sanction of the President shall be necessary for the initiation of the proceedings for any such offence.

This amendment was put to the House and declared carried. On a poll being demanded 50 members voted for the resolution ; no member voted against it. Sixteen members, including the official members, remained neutral.

5. The Select Committee appointed by the Legislative Assembly met once only and submitted no report. The Bill lapsed with the expiry of the life-time of the second Assembly and has not since been re-introduced in the third Assembly.

THE PROVINCIAL GOVERNMENTS.

The Executives.

15. Joint deliberation between the two sides of the Government on important questions should be definitely enjoined by a rule to be included in the Devolution Rules. (Paragraph 96).

The Minority had no objection, *vide* head (17) at page 190.

1. In so far as the Committee endorsed the principle of joint deliberation, their recommendation does not perhaps go further than the recommendations of the Joint Select Committee of Parliament on the Government of India Bill in paragraph 5 of their Report, and the instructions contained in paragraph 4 of the Instrument of Instructions to Governors. The main point in the Committee's recommendations was that the provisions should be more definite, and this was the reason for their suggestion of the insertion of a rule in the Devolution Rules. Under the Committee's proposals, the Governor was to have a discretion, but this discretion was to be merely that of deciding which cases were of importance.

2. The recommendation may be read with recommendations nos. 18 and 20, the three recommendations jointly covering the following proposals—

(1) that the Governor should be compelled by rule to refer all important cases for consideration to both sides of the Executive ;

(2) that his Instructions should be so redrafted as to limit his powers of dissenting from his Ministers, and

(3) that he should make provisions in his rules of executive business to enable any member of either half of the Executive to require any case to be brought up for consideration either by both halves of the Executive sitting together or by all the members of that half of the Executive to which the case appertains.

It has been decided to take no action upon any of these recommendations pending the enquiry to be made by the Statutory Commission, since it was felt to be inexpedient, pending that enquiry, to stereotype local practice. When Parliament decided in 1919 that the device commonly known as dyarchy was the best, and indeed the only available method of endowing provincial Governments forthwith with a partially responsible character, the basic postulate was involved that the responsibility of Ministers should be confined to the administration of the subjects transferred to their control, and further that, for so long at all events as the Government of India Act retains its present form, their responsibility even in the sphere entrusted to their charge should be subject to the overriding power of the Governor, if circumstances required it, to disregard a Minister's advice. The Joint Select Committee, upon whose advice these fundamental postulates were affirmed, recognized the desirability of tempering their rigidity in their practical application and with this object, partly by alteration in the text of the Statute itself, partly by the terms of the rules framed under it, partly by indication of policy in their report and chiefly by the terms of the instructions issued with their approval under the Royal Sign Manual, they secured some softening of the outline of the purist conception of dyarchy. In certain provinces the Governors, following the lead given by the Joint Select Committee, have adopted the principle of joint consultation for almost all purposes, and it has been claimed that thereby results have been attained which are not inferior to those attained in other provinces where the principle of pure dyarchy has been more strictly applied. The discretion to follow a like course, should it seem desirable to them, rests equally with the other Governors. At the same time in a period which is admittedly one of transition it has seemed desirable to avoid the prescription of a rule and to leave the discretion of the Governors unfettered, not only because it seems to be proper that those who think it possible to give effect to the undoubted implications of the Statute should not be prevented from doing so; but also in order that in the time that remained before the appointment of the statutory Royal Commission every possible experiment might be tried within limits which Parliament itself determined not to make too rigid.

3. On these grounds it has been decided that until the enquiry of the Statutory Commission has been held, no changes should be made either in the law or in the Instructions which would tend to hinder natural development in the several provinces whether in the direction of dyarchy or of a unitary form of government to the utmost extent compatible with the basic principles of the existing constitution.

THE PROVINCIAL GOVERNMENTS.

The Executives.

16. The Joint Responsibility of the Ministry is the ideal, and the Devolution Rules and the Instrument of Instructions should be modified so far as may be necessary to indicate this rather than that transferred subjects may be administered by the Governor acting on the advice of a single Minister. (Paragraph 98).

The Minority made the following comments, *vide* head (18) at page 190.

> "As regards the question of joint responsibility of the Ministers we suggest that section 52 (3) itself should be modified so as to secure this end. We would not leave it to the growth of a convention on the subject. We desire to say that the Cabinet system with a Chief Minister should be definitely provided for. It has been tried successfully in Madras and we do not agree with the suggestion of the majority that the difficulties in the way of establishing joint responsibility in India are great and that they are enhanced where the two main communities, Hindu and Muhammadan, are keenly divided in a local Council. We think that in every Council there are at least a certain number of Hindus and Muhammadans who share common political aims and ideals and we believe that the enforcement of the principle of joint responsibility will promote common political action and help to strengthen political parties in Councils and outside."

1. The Government of India have no hesitation in accepting the principle of joint responsibility of the Ministry as the ideal, but apart from the difficulties mentioned in paragraph 98 of the Committee's report, the conception of Cabinet responsibility, as it obtains in England, is, in their opinion, one which is incapable of translation into regulations and any attempt to do so would be likely to prevent rather than to foster its development. Much of the criticism directed against rules alleged to militate against the conception of joint responsibility, on the ground that references occur individually to the "Minister in charge of the subject" and not to Ministers collectively, would seem to be based on a failure either to read the rules in question in their true perspective or to appreciate the fact that the departmental system necessarily involves the transaction of a large proportion of the work of a department by or with the Minister or Member in charge of the department and without reference to his colleagues.

2. It has been decided on these grounds that no amendment should be made either in Devolution Rule 10 or in the Instrument of Instructions or elsewhere for the purpose of giving effect to this recommendation.

THE PROVINCIAL GOVERNMENTS.

THE EXECUTIVES.

17. The constitution should provide that a Minister should ordinarily get the same salary as a Member of the Executive Council in the same province, but that this may be varied by an Act of the local legislature so as not to be less than 3|5ths of, or more than the salary payable to a Member of the Executive Council in the same province. Section 52, sub-section (1) of the Act should be amended accordingly. (Paragraph 100).

The Minority did not indicate the fraction which they would fix as the minimum salary of a Minister, but their comments under head (1) at page 187 indicate that they were in general agreement with the recommendation of the Majority.

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1. When making this recommendation the Committee referred to the refusal of the Bengal Legislative Council to provide any salary for the Ministers, and to the vote of the Legislative Council of the Central Provinces granting the Ministers a salary of Rs. 2 per annum only, and held that it was never intended by Parliament that the Government of India Act of 1919 should give power to the Legislative Council to decide whether Ministers were or were not to form a part of the Government, and Parliament did intend that the Ministers should get a reasonable salary. The Committee referred to the proposals which they had made with the object of securing that the responsibility of the Ministers to the legislatures should be real (recommendation no. 30) ; they, therefore, desired to retain the constitutional position that disapproval of a Minister's policy may be indicated by a motion for the reduction of his salary, and at the same time to accompany it by provisions which would ensure that the Ministers should obtain a reasonable salary. They, therefore, recommended three amendments in sub-section (1) of section 52—

(*a*) that the section should provide that a Minister of a province should ordinarily receive the same salary as a Member of Council in that province ;

(*b*) that power should be given to vary by an Act of the local legislature the salary fixed by the section so that it shall not be less than three-fifths of, nor more than, the salary payable to a Member of Council in that province ; and

(*c*) that the section should provide for the making of rules to enable a formal reduction of a Minister's salary to be moved at the time of the Demands for Grants as a method of criticising his policy.

Of these three amendments, that under (*c*) is discussed under recommendation No. 30 ; comment under this recommendation relates only to amendments (*a*) and (*b*).

2. Sub-section (1) of section 52 of the Government of India Act, as it now stands, provides that there may be paid to any Minister appointed by the Governor in any province the same salary as is payable to a Member of the Executive Council in that province, unless a smaller salary is provided by a vote of the Legislative Council of the province. By its recommendation the Committee intended to secure that the salary paid to any Minister should be the same salary as was paid to a Member of the Executive Council of that province, unless the local legislature by an Act fixed a less salary, and the powers of the Legislature in regard to such an Act were to be restricted so as to provide that the minimum salary should be three-fifths of that of a Member of the Council. Once the salary has been so fixed by an Act of the local Legislature, it would become an amount prescribed by or under any law within the meaning of clause (*iii*) of sub-section (3) of section 72-D. of the Act. It would, therefore not be subject to the vote of the legislature, and the idea of the Committee was evidently that it would probably remain unchanged for a comparatively long period. Section 66 of the Commonwealth of Australia Constitution Act 1900 is a provision on similar lines to that recommended by the Committee, for it provides that a specified annual sum shall be payable for the salaries of the Ministers of State, until Parliament, that is by an Act of Parliament, otherwise provides.

3. The Government of India have agreed with the Committee that it was not the intention of Parliament that the local legislatures should have the power of preventing any Ministers being appointed, and that it was the intention that the Ministers should get a reasonable salary. The recommendation of the Committee would ensure this object. The fraction of three-fifths is an arbitrary fraction, but suitable. The Government of India have, therefore, supported the Committee's recommendation, and the Secretary of State has agreed to undertake Parliamentary legislation to amend section 52 on a convenient

opportunity. It would of course still remain possible for Ministers to follow the self-denying example which has been set by individual Ministers in some provinces and draw a smaller salary than that which is fixed.

4. Though the principle of this recommendation has been accepted, pending Parliamentary legislation, its practical utility as a safeguard of the constitution is open to some question, because the change suggested could not effectively frustrate a fixed determination on the part of the majority of the members of any Legislative Council to prevent Ministers from functioning, and consequently to render their appointment nugatory. A majority so determined has only to oppose by its vote all proposals initiated by Ministers to make it impossible for them to retain office, even though the payment to them of a salary, so long as they retain office, is guaranteed. On the other hand such methods of securing the breakdown of dyarchy would be more injurious to the reputation for common sense and public spirit of its adherents than the simpler method available under the law as it stands of withholding salaries by a single vote. To this extent the amendment of section 52 suggested by the Committee may tend to preserve the constitution from wrecking tactics.

THE PROVINCIAL GOVERNMENTS.

The Executives.

18. The powers of control of the Governor over his Ministers should be more expressly indicated by the redrafting of clause 6 of the Instrument of Instructions so as to provide that subject to a power of interference to prevent unfair discrimination between classes and interests to protect minorities and to safeguard his own responsibility for reserved subjects and in regard to the interests of the members of the permanent services the Governor should not dissent from the opinion of his Ministers. (Paragraph 101).

The Minority do not appear to have made any particular remarks on this recommendation. At page 140, however, they suggested that the power given to the Governor of overruling his Ministers is wholly opposed to constitutional ideals or usage.

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1. This recommendation deals with the important question of the control to be exercised by the Governor over his Ministers. Sub-section 3 of section 52 provides that the Governor shall be guided in relation to Transferred Subjects by the advice of his Ministers. So far the provision corresponds, as indicated by the Committee in paragraph 33 of their report, to provisions in other Constitutions in the British Empire where responsible government has been conferred. The provision, however, goes on to give the Governor power, if he sees sufficient cause, to dissent from the opinion of his Ministers and to require action to be taken otherwise than in accordance with their advice. The recommendation deals with the circumstances in which the Committee consider that the Governor should use his power under this provision. Their definite recommendation was that clause 6 of the Instrument of Instructions to Governors should be redrawn so as to provide that subject to a power of interference to prevent unfair discrimination between classes and interests, to protect minorities, and to safeguard his own responsibility for reserved subjects, and in regard to the interests of the permanent services the Governor should not dissent from the opinion of his Ministers.

2. The recommendation requires to be read with recommendations nos. 15 and 20. For the reasons given under recommendation no. 15 it has been decided that no action should be taken on this recommendation pending the enquiry to be made by the Statutory Commission.

THE PROVINCIAL GOVERNMENTS.

The Executives.

19. Provision should be made in the provincial legislative rules giving a Minister who has resigned the right to make in the Council a personal explanation of the causes of his resignation. The provisions should so far as possible follow English practice. (Paragraph 101).

The Minority made no remarks on this recommendation.

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1. It seems clear that the Committee regarded the power of Ministers to resign as likely to prevent undue interference with them by the Governor and thought that it was only fair that a Minister who may have resigned should have the right to make a personal explanation.

Some objection was taken on the ground that the ex-Minister's explanation might consist of criticisms of the Governor's conduct, the utterance of which in the Council would be opposed to the spirit of the constitution. On the other hand, the local Council would appear to be the proper place in which a Minister who has resigned should make a personal explanation of his resignation, since he would have been appointed to be a Minister on the view that he would be able to command the support of a large section of the members of the Council. It was understood that under the normal procedure followed in the House of Commons such statements would be made before the commencement of public business, and that while a debate may not arise on the explanation, statements pertinent thereto on behalf of Government are permitted. The Government of India concluded therefore that a procedure on those lines might suitably be adopted for the provincial Legislative Councils, and it seemed preferable to make definite provision in the rules rather than to leave the procedure to be established by convention.

2. This recommendation was therefore accepted, and a new rule 10-A. inserted in the Provincial Legislative Council Rules by notifications issued on the 27th October 1926.

THE PROVINCIAL GOVERNMENTS.

The Executives.

20. The rules of executive business made by Governors under section 49 of the Act should be amended to provide, where this is not already the case, that—

(*a*) a Member of Council or a Minister should be able to make a recommendation to the Governor that any case in his own department should be considered before the joint cabinet or before that side of the Government with which it is directly concerned : and

(*b*) that the Secretary of the Department or other officer with a right of direct access to the Governor should inform his Minister of every case in which he differs in opinion from the Minister and of all other important cases which he proposes to refer to the Governor. (Paragraph 102).

The remarks of the Minority will be found in head (28) at page 192.

"As regards the rules of executive business we have no objection to the first recommendation of the majority that where this is not already the case, a rule may be made providing that a Member or a Minister may recommend to the Governor that a case in his own department should be considered before the joint Cabinet or before that side of the Government which is directly concerned in it."

"As regards the second recommendation, we have no objection. As regards the question of direct access of the Secretary or the head of a transferred department to the Governor we do not think that it is parallel to such right of access in the case of a Secretary or head of a department on the reserved side. In the former case the Minister is responsible to the legislature : in the latter the Member in charge of a portfolio on the reserved side of the government owes no such responsibility."

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1. The fact that the Committee only made suggestions for rules to be made under section 49 (2) indicated that they did not intend to interfere with the discretion of the Governors to make rules on the lines suggested, but proposed to leave it to the Governors to decide whether to make such rules or not. If the Committee had intended definitely to secure the adoption of rules on the lines which they suggested, it was probable that, as in the case of recommendation no. 15, they would have made recommendations for rules to be included in the Devolution Rules which would then by the proviso to sub-section (2) of section 49 have overruled any rules made under that sub-section.

The term "joint cabinet" could scarcely be regarded as an entirely suitable term to describe a joint meeting of a dyarchic Government, but the Committee possibly did not intend that the term should be used in the actual rules to be drafted.

It may be observed that under the first proposed rule, the Governor would be left a discretion to decide whether he would accept the recommendation of the Member or the Minister, as the case may be, or not.

2. For the reasons given under recommendation 15, it has been decided that action should not be taken to give effect to the first part of this recommendation pending the enquiry to be made by the Statutory Commission.

The second part of the recommendation is substantially met by the rules in force in several provinces. Thus Rule 8 of the Rules of Business in Bengal reads as follows—

Rule 8.—Any case may, at any stage, if the Secretary in the department to which the case belongs thinks fit, be submitted by him to the Governor :

Provided that when a case is so submitted to the Governor, the Member or Minister in charge shall be at once informed of the fact by the Secretary.

THE PROVINCIAL GOVERNMENTS.

The Executives.

21. The word " may " in clause 2 of rule (2) of the Transferred Subjects (Temporary Administration) Rules should be changed to " shall ". (Paragraph 103).

The Minority [*vide* head (2) page 188] had no objection.

This recommendation was accepted, and effect given to it by a notification dated the 29th April 1926.

THE PROVINCIAL GOVERNMENTS.

The Executives.

22. The provisions as regards Council Secretaries in the Provinces should be modified—

(*a*) so as to provide that they shall get a reasonable salary the amount of which will be determined by an Act of the local Legislature, and

(*b*) that on the Transferred side the Minister should make recommendations for appointment as Council Secretaries for the approval of the Governor and that, when appointed, they should hold and vacate office with the Minister. (Paragraph 105).

The Minority had no objection—*vide* head (19) on page 190.

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1. At present under section 52 sub-section 4 of the Act the salaries to be paid to the Council Secretaries are such as may be provided by vote of the Legislative Council. In the case of the Central Government, however, salaries to be paid to Council Secretaries appointed under section 43-A. of the Act are such salaries as may be provided by the Indian Legislature and in view of the fact that demands are only voted by the Assembly this provision must, in the opinion of the Government of India, be interpreted to mean provision by an Act of the Indian Legislature. The Committee recommended that both on the reserved and the transferred sides the salaries to be paid to Council Secretaries should be determined by an Act of the local Legislature. This recommendation, therefore, would in practice reproduce the provision now in force in regard to the salaries of any Council Secretaries who might be appointed by the Governor General. Under sub-section 5 of section 72-C. of the Act the local Legislatures have already powers to determine by Act the salaries of the elected Presidents and the Deputy Presidents. The further recommendation of the Committee only affects Council Secretaries on the transferred side of the Government. The Committee recommended that they should be appointed on the nomination of the Minister and should hold and vacate office with the Minister.

2. The local Governments raised little objection to this recommendation though most of them suggested that Council Secretaries are not required. Other suggestions were that the maximum and minimum limits of the salaries should be specified in the sub-section and that the salary should be fixed in the Statute. The Government of India do not consider that there is sufficient reason for adding a further schedule to the Act to deal with the salaries of Council Secretaries, and think that the Committee were correct in leaving both the maximum and minimum salaries to be fixed in this case by an Act of the local Legislature. Under the recommendation it will still be within the discretion of the Governor to appoint Council Secretaries or not.

3. This recommendation therefore has the support of the Government of India and Parliamentary legislation for the amendment of section 52 is awaited.

THE PROVINCIAL GOVERNMENTS.

THE EXECUTIVES.

23. The following provincial reserved subjects should now be transferred:—

(*a*) No. 12, Fisheries. In Assam.

(*b*) * * * * * *

(*c*) * * * * * *

(*d*) * * * * * *

(Paragraph 93).

This recommendation may be read with the remarks of the Minority at pages 185 to 187.

The Government of Assam saw no reason why this subject should not be transferred, except in regard to the collection of revenue from Fisheries. But the fact that the revenue from Fisheries is collected by the Land Revenue staff does not mean that Fisheries cannot be transferred. Devolution Rule 11 definitely contemplates officers performing duties in departments dealing with reserved as well as in departments dealing with transferred subjects. This recommendation was therefore accepted and effect was given to it by an amendment of Schedule II to the Devolution Rules notified on the 29th April 1926.

THE PROVINCIAL GOVERNMENTS.

THE EXECUTIVES.

23. The following provincial reserved subjects should now be transferred:—

(*a*) * * * *

(*b*) *No. 24-Forests.*—In provinces in which this subject has not been transferred already, unless the local Government concerned on examination of the position can make out a convincing case against transfer.

(*c*) * * * *

(*d*) * * * * (Paragraph 93).

This recommendation may be read with the remarks of the Minority at pages 185 to 187. The Minority observed that the only major subject recommended for transfer by the Majority was Forests.

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1. From the form in which their recommendation was made, the Majority appear to have recognised a possibility that the question of the transfer of forests might raise different issues in the different provinces according to the circumstances of forest administration in each. In some provinces forest administration may have been carried to a high stage of technical efficiency, and the problem there would be mainly one of maintaining existing standards; in others, though forests have been reserved and demarcated, exploitation may still be in its infancy, and the main problems would perhaps relate to the initiation of valuation surveys, experiments with various timbers, the development of economical methods of extraction, and the creation of markets for the produce in competition with other sources of supply; in other provinces again the work even of demarcation may still be far from complete, and the broad lines of forest policy still undetermined.

2. The guiding principles laid down in paragraph 238 of the Joint Report on Indian Constitutional Reforms to govern the transfer of subjects to popular control under the present constitution was " to include in the transferred list those departments which afford most opportunity for local knowledge and social service, those in which Indians have shewn themselves to be keenly interested, those in which mistakes which occur, though serious, would not be irremediable, and those which stand in most need of development".

From the last of these principles it might be argued that in provinces where forest administration is in its early stages and where the important problem for the future development of the forests is further reservation and demarcation, the transfer of forests to popular control is desirable.

Where forests have been reserved, but their development has not greatly advanced, it might be claimed that this is precisely the situation in which the Joint Authors contemplated that there should be transfer and that Ministers are no more likely to be unsuccessful in developing the forests and in stimulating research than their predecessors have been.

In the last stage where, as a result of careful management on scientific lines over a number of years, the forests have reached the stage of active exploitation, fears based upon assumptions that popular control by the Legislative Council would necessarily involve a deterioration in the technical standards of administration might prove to be unsupported, so far as conditions are comparable, by the experience of Bombay and Burma where forests are transferred, and by the experience, within the province, of other subjects which have passed to the control of Ministers.

3. Arguments against transfer at one or other of these three broad stages of forest administration may carry greater or less weight according to other conditions generally existent in the province. It is possible however to take the view that in considering the broad question of the transfer of Forests, variations in the forest development of different provinces may not in themselves be a matter of the first importance, since to accept all the arguments based upon the particular stage of forest development which could be brought forward against transfer would tend to imply that at no stage of forest administration could transfer, in present circumstances, be contemplated.

4. Objections have, however, been urged on more general grounds ; for instance, on an alleged hostility of the provincial Legislative Councils to forest conservation; on a feared inability of Ministers to withstand short-sighted demands the acceptance of which might undo the work of years; and on the temptation to which Ministers might be exposed to over-work the forests so as to obtain immediate yields of revenue without due regard to future interests. Attention too has been drawn to the fact that large forest areas are

situated in backward tracts wholly or partially excluded from the jurisdiction of Ministers and of the Councils. Further, it has been urged that, since protected, as distinct from reserved, forests are frequently in charge not of the Forest Department, but of the Land Revenue officials, Forests should not be transferred, so long as Land Revenue is reserved. Lastly stress is laid upon the provincialisation of the Forest Service which would follow upon the transfer of the subject; and on the loss to the Central Government of powers of superintendence, direction and control over forest administration. To this last argument weight is lent by the fact that the reserved forests are frequently the catchment areas of large rivers on which the prosperity of other provinces depends, and it is claimed that since the provincial forest administration has therefore more than a provincial interest, it should remain under the general control of the Central Government, which can be secured under the present constitution only by retaining Forests as a reserved subject.

Both the nature and the force of these arguments vary. Some may be said to be *a priori* and psychological—based more on conjecture as to the probable attitude of certain elements in the machinery of the constitution than on actual experience. Others, as already stated, may be said to imply a permanent inhibition against the transfer of Forests. Others again may be susceptible of treatment, either by the adoption of special expedients designed to meet the needs of individual provinces or, where they are based on the economic value of Forests to India as a whole, by the retention to the Government of India of a power of eventual intervention to safeguard what is of all-India interest. Finally, against those who oppose transfer, it may be possible to place the experience of Bombay and Burma, should it be shown that the transfer of Forests in these provinces, even if not of actual benefit, has not been attended with harmful consequences.

5. No decision has been taken by the Government of India upon this recommendation of the Committee, nor will any decision be taken, pending the enquiry into the constitution now being made by the Statutory Commission.

THE PROVINCIAL GOVERNMENTS.

The Executives.

23. The following provincial reserved subjects should now be transferred :—

(*a*) * * * *

(*b*) * * * *

(*c*) No. 16, Excise. In Assam.

(*d*) * * * *

(Paragraph 93).

This recommendation may be read with the remarks of the Minority at pages 185 to 187.

No objection was raised by the Government of Assam. This recommendation was therefore accepted, and effect was given to it by an amendment of Schedule II to the Devolution Rules notified on the 29th April 1926.

THE PROVINCIAL GOVERNMENTS.

THE EXECUTIVES.

23. The following provincial reserved subjects should now be transferred:—

(*a*) * * * *

(*b*) * * * *

(*c*) * * * *

(*d*) *No. 26*—From amongst the industrial matters included in this item the following:—

(*d*) boilers;

(*e*) gas; and

(*g*) housing of labour.

But boilers and housing of labour should remain subject to legislation by the Indian legislature.

(Paragraph 93).

This recommendation may be read with the remarks of the Minority at pages 185 to 187.

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1. *Boilers.*—The recommendation for the transfer of 'boilers' received some support, but the local Governments were on the whole opposed to it. The subject is even more connected with 'factories' than is the subject of 'smoke nuisances', which the Committee for that reason had thought should not be transferred. It was decided therefore not to accept this recommendation.

2. *Gas.*—There was no objection to the transfer of "gas", but since the other items under this head were retained on the reserved side, it was decided that "gas" should not be transferred.

3. *Housing of labour.*—Objection was raised to the transfer of this subject on the ground that housing questions are usually connected with the housing of the depressed classes and that subjects affecting those classes should remain reserved. In Bombay the only important scheme for the housing of the working classes in that Presidency had been carried out by the Development Department on the reserved side, and a division of authority was considered undesirable. In Assam the housing of labour means for the most part the housing of labour in the tea gardens dealt with in connection with 'immigration' which is a reserved subject. Moreover it was urged that the housing of labour could not in practice be dissociated from the welfare of labour, which again is dealt with on the reserved side. On these grounds, it was decided not to accept this recommendation.

THE PROVINCIAL GOVERNMENTS.

THE EXECUTIVES.

24. The following action should be taken in regard to other provincial subjects—

(*a*) *No. 15.—Land Acquisition.*—Local Governments should be consulted as to whether, in so far as it relates to purely provincial land acquisition, this subject cannot be transferred.

(*b*) *No. 18, Provincial Law Reports.*—The High Courts should be consulted as to whether this subject cannot be transferred.

(*c*) *No. 27, Stores and Stationery.*—The existing restriction on the transfer of this subject that it is subject in the case of imported stores and stationery to such rules as may be prescribed by the Secretary of State in Council should be deleted.

(*d*) *No. 43, Provincial Government Presses.*—The question whether this subject cannot be transferred should be examined. (Paragraph 93).

This recommendation may be read with the remarks of the Minority at pages 185 to 187. The Minority had no objection to these transfers, and would have been prepared to go further.

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1. *No. 15—Land Acquisition.*—In discussing the transfer of land acquisition the Committee stated that the *prima facie* reasons for not transferring this subject were not clear. They thought a difficulty might arise with the acquisition of land for the Central Government, but saw no objection to transfer so long as it related to a provincial land acquisition. The Committee suggested that the provincial Governments should be consulted before any action was taken and in effect threw the onus on the provincial Governments to show why land acquisition should remain a reserved subject.

In accordance with the suggestion made by the Committee local Governments were consulted and were found to be practically unanimous in their opposition to any transfer of the subject of land acquisition.

The functions of the executive Governments in India in regard to this subject may be stated to be as follows :—

(*i*) The decision under section 4 of the Land Acquisition Act of 1894 that a notification shall be published to the effect that land in a particular locality is likely to be needed for a public purpose, and the decision that a declaration be made under section 6 that particular land is needed for public purpose;

(*ii*) the making of rules under section 55 for the guidance of officers in matters connected with the acquisition of land; and

(*iii*) the actual process of acquisition.

Of these functions the Government of India considered that there was little doubt that the first is a power which should be possessed by both the reserved and the transferred sides of the provincial Governments. Some local Governments, for example the Governments of Bombay and the United Provinces, had in fact indicated in their replies that the decision in each case whether land should be acquired under the rules is left to the administrative department concerned which alone can judge of the necessity. The Government of India were of opinion that this practice scarcely corresponded to the actual wording of entry 15 of the list of provincial subjects, and the point has now been cleared up by an alteration of the schedule to the Devolution Rules so as to provide that the Government, for the purposes of declarations under sections 4 and 6 of the Land Acquisition Act of 1894, is the Government in the reserved or transferred half according as the land is to be acquired for a reserved or a transferred department. This amendment to Schedule II of the Devolution Rules was made by a notification issued on the 16th July 1926.

In regard to the second function the Government of India considered that the power to make rules should be exercised by one side only of the Government, that is to say the reserved side: they were therefore opposed to any transfer of that function.

As regards the third function there seemed to the Government of India to be no doubt that it should be exercised by one staff and that is the staff which is engaged upon the administration of land revenue. No transfer has accordingly been made of this function.

2. *No. 18, Provincial Law Reports.*—The majority of the High Courts and local Governments were opposed to this recommendation which has not been accepted. The selection of judgments to be reported is a matter which intimately affects the administration of civil and criminal justice. So long as that subject remains reserved the selection and publication of judgments binding on the lower courts should also remain reserved.

3. *No. 27, Stores and Stationery.*—Effect was given to this recommendation by rules made by the Secretary of State in Council under item 27 of Part II of Schedule I and item 17 of Schedule II to the Devolution Rules prescribing that the purchase of imported stores and stationery shall be regulated by rules made by local Governments. These rules were published by a notification issued on the 7th January 1926.

4. *No. 43, Provincial Government Press.*—This recommendation has not been accepted. The majority of the local Governments were opposed to the transfer of this subject on the ground that presses do work for reserved departments and their transfer might result in administrative inconvenience. In some provinces the agency of the Jails is used to a considerable extent for press work and it was urged that so long as Jails remain a reserved subject it would be unsuitable to transfer Government presses.

THE PROVINCIAL GOVERNMENTS.

The Executives.

25. The two schedules of subjects annexed to the Devolution Rules should be examined, and the lists should be re-arranged on a more logical basis.

The comments made by the Majority (paragraph 93) were as follows :—

> "As a general minor recommendation we recommend that the two schedules should be examined and the lists should be re-arranged on a more logical basis. We would point out, for example, that it is not possible by an examination of the list of provincial subjects to ascertain which of these subjects are reserved without a reference to the list of transferred subjects, and, again, some of the minor subjects specifically mentioned for example, coroners, seem already to be included within the scope of larger subjects."

No action has yet been taken on this formal recommendation.

THE PROVINCIAL GOVERNMENTS.

THE LEGISLATURES.

26. Power should be taken to modify by rules the existing stringency of the control over provincial legislation which is due to the previous sanction provisions by the inclusion of a proviso in sub-section 3 of section 80-A. of the Act. (Paragraph 83).

The Minority [*vide* head (11) at page 189] had no objection.

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1. In the course of their comments on this recommendation the Committee noted that the Government of India had suggested the addition to sub-section (3) of section 80-A. of a proviso in the following terms :—

> "Provided that nothing hereinbefore contained shall be deemed to prohibit the local legislature of any province from making or taking into consideration, without the previous sanction of the Governor-General, any law satisfying conditions prescribed in this behalf by rules under this Act."

The Government of India favour the expedient of leaving the conditions necessary to exempt a law from the requirement of sanction to be determined bu rule, since the adoption of this device would make for elasticity and admit of a progressive advance in the relaxation of the requirements imposed by the existing law. The same view has been taken by the Secretary of State who has agreed to introduce Parliamentary legislation to amend section 80-A. (3) on a convenient opportunity.

2. The form to be given to rules framed under section 80-A. (3) would not be finally settled until the statute had been amended, but it may be noted that, so long as the present form of the constitution is maintained, it would not be the intention of the Government of India to tamper with the fundamental principles of the law of sanction, but to mitigate the inconvenience resulting from its operation in cases in which that inconvenience is not attended with any compensating advantage.

THE PROVINCIAL GOVERNMENTS.

The Legislatures.

27. The existing provisions, contained in item 5 in the schedule of provincial subjects annexed to the Devolution Rules, which make—

(*i*) the control of the establishment and the regulation of the constitution and functions of new Universities; and

(*ii*) the Calcutta University, and the control and organisation of secondary education in the Presidency of Bengal subject to legislation by the Indian Legislature should be deleted. (Paragraph 93).

The remarks of the Minority at pages 185 to 187 may be seen. The Minority had no objection, and were prepared to go further with the transfer of subjects.

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1. To take first the second part of this recommendation, the period of five years from the date of the commencement of the Devolution Rules for which the Calcutta University and the control and organisation of secondary education in Bengal was subject to legislation by the Indian Legislature was due to expire at the latest on the 1st April 1926. The Government of India agreed that the entry might be removed as practically spent.

2. The first part of the recommendation was more important. The provision that the control of the establishment and the regulation of the constitution and functions of new Universities should be subject to legislation by the Indian Legislature merely meant, however, that the Indian Legislature may legislate on the subject without previous sanction, and the provincial legislatures with previous sanction. So long as the provision was maintained, it did enable the Central Government to exercise some slight control, but such control was restricted to new Universities and did not affect Universities already established. The Government of India agreed to surrender this small measure of control and accepted this part also of the Committee's recommendation.

Item 5 in Part II of Schedule I and in Schedule II to the Devolution Rules was amended accordingly by notification issued on the 28th April 1926.

THE PROVINCIAL GOVERNMENTS.

The Legislatures.

28. When previous sanction is granted under Section 80-A. or Section 80-C. of the Act to provincial legislative proposals promoted by non-officials, the sanction should be available only to the member to whom it was granted, and for the particular Council sitting when it was granted. (Paragraph 84).

The Minority [*vide* head (11) on page 189] had no objection.

This recommendation was made by the Committee with reference to recommendation no. 5 in Appendix II of the letter of the Government of Madras published in the Provincial Reports of the working of the reformed constitution in 1924. The Government of India discussed the question with the Government of Madras and held that it was not necessary to make any amendments in the Legislative Council Rules to give effect to this recommendation as the existing law already covers both proposals. The Government of Madras agreed that the matter need not be pursued further.

THE PROVINCIAL GOVERNMENTS.

THE LEGISLATURES.

29. If decided to be necessary, the existing law in regard to the reservation of provincial Bills should be modified so as to make it clear—

(*a*) that a Governor may return a Bill passed by the Legislative Council for reconsideration by a new Council, in whole or in part ;

(*b*) that when the Bill is so returned for reconsideration, whether to the old or to a new Council, amendments may be moved in the Council to any parts of the Bill, if returned for reconsideration in whole, and if returned for reconsideration in part, to those parts ; and

(*c*) the amendments suggested by the Governor are open to rejection or amendment by the Council (paragraph 86).

The Minority [*vide* head (11) at page 189] had no objection.

When discussing this recommendation in paragraph 86, the Committee observed that in its opinion the Governor would be well advised to return a Bill, passed by an old Council, to the new Council for reconsideration in whole, since otherwise he might commit the new Council to provisions in the legislation to which it is opposed.

2. The first question for consideration was whether this recommendation was possible to follow under the existing law. Rule 21-A. in the Legislative Council Rules of the Governors' provinces does not provide for the lapse of a Bill which has been passed by a Legislative Council, but to which the Governor has not accorded his assent when the Council is dissolved. The rule, therefore, does not prevent a Governor taking action under section 81-A in regard to a Bill passed by a Council after the Council has been dissolved. In regard to the suggestion that as a matter of practice the Governor in such a case should return the Bill for consideration in whole, difficulties arise from the difference in language between the provisions of sub-section (1) of section 81-A and clause (*a*) of sub-section (2) of the same section. In the former case it is clear that the Governor may return a Bill for reconsideration either in whole or in part. In the latter case when the Bill has been reserved, the Governor returns the Bill for further consideration by the Council with a recommendation that the Council shall consider amendments thereto. The difference in language between the two provisions suggests that, in the latter case, when a Bill has been reserved, the Governor may not return it for consideration as a whole, but may only return it for consideration of the recommended amendments. Assuming this view of the existing law to be correct, then in the case of a reserved Bill, it is impossible for the Governor to follow the practice suggested by the Committee.

3. The view which the Government of India have taken is that section 81-A should not be used after dissolution and that both that section and sub-section (4) of section 67, which relates to the return by the Governor General of Bills passed by both chambers of the Indian Legislature, should be amended so as to prevent a Bill being returned, whether in whole or in part, if dissolution has intervened. At the same time they think it desirable for purposes of clarification that the final words of clause (*a*) of sub-section (2) of section 81-A should be amended to read " return a Bill to the Council for reconsideration, either in whole or in part, together with any amendments which he may recommend." The Secretary of State has noted these amendments for consideration when a favourable opportunity offers of framing a Bill.

4. The Government of India have no doubt that the existing law is correctly stated in (*b*) and (*c*) of the Committee's recommendation, but in these respects it would be for the Presidents concerned to interpret the law when a case arises. It would be possible to prevent divergence of practice by including in the Legislative Rules specific rules for regulating the procedure when a Bill is returned for reconsideration, but the Government of India have not thought that the need for such rules has yet arisen.

THE PROVINCIAL GOVERNMENTS.

THE LEGISLATURES.

30. In order to enable the responsibility of Ministers to the Councils to be enforced, provision should be made in the provincial legislative council rules for the following classes of motions—

(*a*) a motion of no confidence,

(*b*) a motion questioning a Minister's policy in a particular matter,

(*c*) a motion for the formal reduction of a Minister's salary to be moved at the time when the demands are made for grants.

So far as the latter class of motions is concerned it will be necessary to provide for them when amendments are made to section 52 of the Act in regard to the Minister's salary. So far as the two former motions are concerned in order to prevent them from being moved frivolously, and to provide that they should come up for discussion at an early date, the rules should provide that the person who gives notice of the motion should show that he has the support of about one-third of the members of the council, and that in that case the President shall direct that the motion shall be included in the list of business on a date not later than 10 days after the date of notice. (Paragraphs 80 and 100.)

The Minority either definitely supported or said that they had no objection to these recommendations—*vide* head (1) at page 187, and head (10) at page 189.

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1. Effect has been given to (*a*) and (*b*) of this recommendation by a new rule 12-A inserted in the Legislative Council Rules of the Governors' Provinces by notifications issued on the 27th October 1926, motions under which require the consent of the President and are subject to the following restrictions, namely :—

(*a*) leave to make the motion must be asked for after questions and before the business for the day is entered upon ; and

(*b*) the member asking for leave must, before the commencement of the sitting of the day, leave with the Secretary a written notice of the motion which he proposes to make.

The rule accepts the suggestion of the Committee that in order to prevent the unnecessary harassment of Ministers the person giving notice of a motion, whether of want of confidence or disapproving the policy of the Minister in a particular respect, should show that he has the support of about one-third of the members of the Council. The numbers specified in the rule for each provincial Legislative Council are the largest even integers which are less than one-third of the present strength of each Council.

2. Effect has not yet been given to (*c*) of this recommendation, pending the amendment of section 52 of the Government of India Act on the lines suggested by the Committee in recommendation no. 17. Though it can be argued that it is unnecessary to provide for a formal reduction of a Minister's salary since his policy can be attacked during the discussion of the demands for the grants for which he is responsible, such opportunities occur only once a year. This part also of the Committee's recommendation has therefore been given the support of the Government of India.

THE PROVINCIAL GOVERNMENTS.

The Legislatures.

31. Rule 30 of the provincial Legislative Council Rules, and rule 48 of the Indian Legislative Rules should be amended so as to secure that motions may not be moved when a demand is made for a grant for the omission of the whole grant. (Paragraph 89).

The Minority had no objection—*vide* head (15) at page 190.

This recommendation was accepted, and the rules amended by notifications issued on the 27th April 1926. As observed by the Committee, this amendment does not detract from the powers of the legislatures, as it remains open to them to reject the whole demand by negativing the substantive motion when it is put.

THE PROVINCIAL GOVERNMENTS.

THE LEGISLATURES.

32. The Central Provinces Electoral Rules should be amended so as to include an additional constituency comprising the Mandla district. It is for consideration whether the constituency should include Mandla town, or whether the town should continue to be included in the urban constituency of small towns in the Jubbulpore Division. When the constituency is created, the existing provision in the rules for the nomination of a member to represent this district should be deleted. (Paragraph 68).

The Minority made no remarks.

The Government of the Central Provinces agreed that the Mandla town which has a population of less than 9,000 and is distinctly rural in character, should be included in the same constituency as the proposed non-Muhammadan rural constituency for the Mandla district. With the grant of the franchise for the local Council to non-Muhammadan electors in this district, it was clear that Muhammadans and landholders who are otherwise qualified and reside in the same area should be given the franchise, and that all these classes should obtain the franchise not only for the local Council, but also for the Council of State and for the Legislative Assembly.

2. The Electoral Rules were amended accordingly by notifications published on the 29th April 1926.

THE PROVINCIAL GOVERNMENTS.

THE LEGISLATURES.

33. The six months residential qualification should not be required from candidates for European seats in any of the legislative bodies constituted under the Act. In these cases candidates should only be required to have an all-India residential qualification which should not be affected by temporary leave of absence from India. (Paragraph 71).

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1. Under head (24) at page 191 the Minority stated that as regards European commercial representation in the Legislative Assembly, they had no objection to the recommendations of the Majority. There is no elected European commercial representation, as such, in the Legislative Assembly where the elected European representation is entirely provided in general constituencies ; moreover, the recommendation of the Majority relates both to the provincial legislatures and to the Central Legislature. It is however apparently to be assumed that the Minority had no objection to the proposals made by the Majority in their recommendation no. 33.

2. The recommendation is in general terms and the Government of India considered that it was not intended to apply either to special constituencies or to seats for which Europeans may stand for election together with other non-Muhammadans. The scope of the recommendation was therefore limited to the European general constituencies of the Legislative Assembly (namely, Madras, Bombay, Bengal, the United Provinces, Burma and Assam), and of the local legislative Councils of Madras, Bombay, Bengal, the United Provinces, Burma and Bihar and Orissa.

3. The recommendation falls into two parts, first that a six months' residential qualification should not be required from candidates for European seats ; and, second, that candidates should only be required to have an all-India residential qualification which should not be affected by temporary leave of absence from India.

Under the rules in force at the time when the Committee made its recommendation, a six months residential qualification was required only for the Bombay Legislative Council under rule 6 (1) (*b*) of the Bombay Electoral Rules. After consultation with the Government of Bombay the Government of India agreed that this rule should be amended, and by notification issued on the 8th July 1926 a proviso was added to clause (1) of rule (6) to the effect that the provisions of clause (*b*) shall not apply to candidates for European constituencies.

4. Apart from that rule in the Bombay Legislative Rules, the only residential restriction on candidates was the restriction which follows from the rule that they must be electors ; there was therefore no necessity to prescribe an all-India residential qualification for candidates, and the Government of India decided that it would be impracticable to prescribe an all-India residential qualification for electors. It would mean that European electors whose other qualifications depended, for example, on the payment of income-tax could be registered as electors of all European constituencies throughout India. The Government of India agreed however that the rules should be so amended as to provide that the residential qualifications of electors for general European constituencies should in each case be a residential qualification in the province concerned which should not be affected by temporary leave of absence from India.

5. In response to representations made by the European Association one important modification was made. The Association drew attention to the difficulty experienced in finding suitable candidates for some European seats in the Assembly owing to the length of the sessions of the Central Legislature and the great distance of Simla and Delhi from some of the provinces. The Association suggested therefore that the qualification for candidature for an European seat in the Assembly should be enrolment as an elector in any European constituency of the Assembly. This suggestion was accepted by the Government of India.

These amendments were effected by notifications issued on the 8th July 1926.

THE PROVINCIAL GOVERNMENTS.

THE LEGISLATURES.

Recommendations nos. 34 and 35—*vide* Recommendation no. 10.

THE PROVINCIAL GOVERNMENTS.

FINANCE.

36. The Meston settlement should be revised as soon as a favourable opportunity occurs. (Paragraph 56).

The comments of the Minority will be found at pages 144 and 145. The Minority were of opinion that the earliest possible opportunity should be taken to put provincial finances on a sound footing, but feared that it would be extremely difficult to arrive at any satisfactory solution independently of large and substantial alteration in the Constitution.

A memorandum on the subject of the Meston settlement is being separately presented to the Commission.

THE PROVINCIAL GOVERNMENTS.

Finance.

37. The Member of the Executive Council in charge of the Finance Department should not be in charge of any of the main spending departments. (Paragraph 110).

In the course of their comments generally on the Finance Department, pages 165 to 168, the Minority said that it was unsatisfactory that the Finance Member should have charge of any of the administrative Departments.

The Government of India accepted this recommendation, and in 1926 requested provincial Governments to give effect to it to the fullest extent possible.

THE PROVINCIAL GOVERNMENTS.

FINANCE.

38. The Devolution Rules relating to the appointment of a Joint Financial Secretary should be modified so as to provide for a power to appoint Financial Advisers to the Ministers in regard to transferred subjects. (Paragraph 112).

The Minority did not discuss this recommendation as it stands, but in referring to the Joint Financial Secretary said that the provision would very likely have produced administrative difficulties and friction, and they were not surprised that in no single province had it been utilized. (Page 165).

This recommendation was accepted, and the necessary amendment of Devolution Rule no. 36 was made by notification issued on the 15th July 1926.

THE PROVINCIAL GOVERNMENTS.

Finance.

39. Devolution Rule 31 should be amended so as to indicate clearly that it applies not only to the distribution of revenues on the occasion of the preparation of the annual estimates of revenue and expenditure, but also to the distribution between reserved and transferred departments of any revenues which may become available during the course of a financial year. (Paragraph 110).

The Minority expressed no opinion.

This recommendation was accepted, and by notification issued on the 15th July 1926 Devolution Rule 31 was amended by the substitution of the words " the framing of proposals for the apportionment of funds between reserved and transferred departments respectively, whether at the time of the preparation of the Budget or otherwise " for the words " the framing of proposals for expenditure in regard to reserved and transferred subjects ".

THE PROVINCIAL GOVERNMENTS.

FINANCE.

40. The powers of a Member or a Minister to sanction reappropriations which now only extend to reappropriations within a grant between heads subordinate to a minor head should be extended, subject to the existing limitations in regard to expenditure which involves a recurring liability and in regard to the communication to the Finance Department of a copy of any order, to any re-appropriation within a grant from one major, minor, or subordinate head to another. (Paragraph 113).

The Minority had no objection—*vide* head (21) at page 191.

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1. It is possible that in making this recommendation in wide terms the Committee did not realise the varying practice in regard to the voting of grants in different provinces. For example, Burma has only four grants, one for each member of the Government, and the power of the legislature in regard to appropriation of supply is taken away by re-appropriation within these large grants. Some further definition of the proposed powers of Ministers to re-appropriate without the sanction of the Finance Department would certainly be required.

2. The Government of India were, however, opposed to this recommendation on more general grounds. In the United Kingdom, Treasury sanction is required to every re-appropriation from one sub-head to another within a grant, and every such re-appropriation has to be defended before the Public Accounts Committee. In India the Public Accounts Committees are similarly required to scrutinise every re-appropriation within a grant, and for that reason it is desirable to retain in the hands of the Finance Department the power of sanctioning such re-appropriations. The Public Accounts Committees, both of the Assembly and of the Provincial Councils may be expected, as time goes on, to assert more and more strongly the necessity from their standpoint of restricting powers of re-appropriation ; the Government of India were therefore unable to agree to any widening of the existing rules by reducing the powers of the Finance Department. The Government of India have no doubt that, as experience grows, provincial governments will be able to improve their form of estimate and appropriation accounts, following on improvements contemplated in the Central Government's forms, so as to give the required elasticity by widening the scope of sub-heads and replacing minor and major heads of account by sub-heads. The Government of India recognise that the present diarchical division between the Finance Member and the Ministers makes the existing restrictions rather more irksome, but the main objection taken to them is exactly the objection taken everywhere to Finance Department control, which is of course essential.

3. For these reasons this recommendation has not been accepted.

THE PROVINCIAL GOVERNMENTS.

FINANCE.

41. In such cases as those relating to the grant of forest rights, the provincial Finance Department should prescribe that its assent in cases in which previous consultation with it is required by the rules, may be presumed in cases of even greater importance than those that may now be disposed of by the permanent officials of the Forest Department. (Paragraph 114).

The Minority had no objection—*vide* head (21) at page 191.

As explained in paragraph 114 of the Report this recommendation arose out of representations made by the Ministers in Burma. Under Devolution Rule 45, provincial Finance Departments have power to dispense with previous consultation by general or special order specifying cases in which their assent may be presumed to have been given. The Government of India agreed that the powers of a Member or Minister in charge of a Department to act without consulting the Finance Department should not be less, and may be appreciably greater, than those granted to permanent officials. All that was intended by the Committee was to endorse this principle. The Government of India communicated to the Provincial Governments their agreement with the Committee's recommendation.

THE PROVINCIAL GOVERNMENTS.

FINANCE.

42. Steps should be taken to obtain a definition of the phrase 'government of India' in section 20, sub-section (1) of the Act. The scope of the phrase should extend, for example, to expenditure on the financing of industries by private persons. (Paragraph 115).

The Minority had no objection—*vide* head (22) at page 191.

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1. The Committee raised this question in connection with restrictions upon the borrowing powers of local Governments. They stated that the phrase "government of India" in sub-section (1) of section 20 of the Act had been held to mean the superintendence direction and control of the country, and that doubts had been expressed in certain judicial decisions as to whether certain classes of expenditure came within its scope. As an example of the restrictions which might possibly be held to follow from this provision, the Committee cited the question of whether a local Government would be able to utilise funds raised by borrowing to finance industries being carried on by private persons.

2. The Committee appear to have had in mind rulings reported in I. L. R. XXVIII, Bombay, 314, I. L. R. XXXVIII, Calcutta, 754, and I. L. R. XLV, Madras, 156, in regard to judicial interpretations of the phrase "government of India". It was held by Jenkins, C. J., in the Bombay case and by Mookerjee, J., in the Calcutta case that the words meant the superintendence direction and control of the country. With regard to Sir Ashutosh Mookerjee's judgment, however, he was hearing a case with another Judge, Teunon, J., who dissented from his remarks on this point and no final decision in the case was passed on it. In the Madras case Coutts Trotter, J., held on the other hand that as a general rule it would be an impossible task exactly to draw the line as to what falls within the strict purview of the phrase "government of India", and ruled that it was not outside the statutory powers of the Governments in India to conduct a soap factory for the purpose of encouraging by demonstration the starting of this industry by private persons.

3. The Committee suggested that steps should be taken to obtain a clear definition of the meaning of the phrase. In 1923 the Government of India had referred the question to the Advocate-General of Bengal who advised that he agreed with Coutts Trotter, J., that it would be an impossible task to draw line as to what falls within the strict purview of the phrase "government of India" and that he was unable to formulate an exact interpretation of the words "for the purposes of the government of India alone" beyond stating that the words are fairly wide and their application must depend on the facts and circumstances of the case. It seemed unnecessary to the Government of India to take any further action upon the Committee's recommendation until it is clear that other courts will not follow the view adopted by Coutts Trotter, J.

4. With regard to the particular point mentioned by the Committee, as to the power to expend revenues of India on the financing of industries by private persons, their use for such purposes is permitted by the Local State Aid to Industries Acts passed by the Madras and Bihar and Orissa Legislative Councils and by the Punjab Industrial Loans Act. Similarly, recommendations of the Tariff Board in various cases assume that Governments in India can take this course. The development of industries is mentioned as a function of Government in the Schedule to the Devolution Rules.

THE PROVINCIAL GOVERNMENTS.

FINANCE.

43. If the experiments now being undertaken in regard to the separation of accounts from audit shew that such separation is feasible, and if it is also found to be feasible to separate provincial accounts from the accounts of the central government, action should be taken in both these directions. (Paragraph 116).

The Minority had no objection—*vide* head (23) at page 191.

Subsequent to the recommendation of the Committee an experiment was made with the separation of accounts from audit in the United Provinces. A memorandum dealing generally with the issues involved in the separation of accounts from audit is being separately presented to the Commission.

THE PROVINCIAL GOVERNMENTS.

The Public Services.

44. Any action necessary for the protection of the services in the exercise of their functions and in the enjoyment of their recognised rights and privileges should be taken. (Paragraph 104).

On page 163 the Minority said that they fully realised the imperative necessity of safeguarding the interests of the services and suggested that this should be achieved by the passing of an Act by the Imperial Parliament or by the Indian Legislature or by the incorporation of special provisions for the protection of the rights and interests of the services in the future constitution of India. They felt that, whichever method is adopted, the question calls for an effective and early solution. The Minority observed that they wished the permanent services in India to be placed on the same basis as in England.

For the present position with regard to the subjects covered by this recommendation and by recommendations 45 and 46, all of which are in general terms, reference is invited to a memorandum separately presented to the Commission on the subject of the position of the Services.

THE PROVINCIAL GOVERNMENTS.

The Public Services.

45. The control over recruitment for the services in the transferred field should be entrusted to the proposed Public Service Commission or Commissions. (Paragraph 104).

On pages 164 and 165 the Minority criticised the provisions of the Act relating to the appointment of a Public Services Commission by the Secretary of State in Council. With reference to the provincialisation of the services directly employed in the administration of transferred subjects, the Minority suggested that it would be anomalous to place the Services or any portion of them under the protection or control of any authority other than the Government of India, and stated that they recognised the importance of keeping the services well contented, and beyond the reach of the fluctuations of political opinion or influence incidental to a system of democratic Government. The Minority held that proper relations between the legislatures and the services cannot be established so long as the former feel that they have no power of dealing with them in respect of the matters mentioned in section 96B (2), and so long as the latter feel that they can look up to a higher authority outside India in respect of those matters. The Minority considered that what was required was the cultivation of a due sense of responsibility on either side, and stated that they would welcome any legislative enactment which secured that object. They added that their views could obviously not be given effect to by the exercise of any rule-making power.

As stated under recommendation 44, reference on this subject is invited to a memorandum separately presented to the Commission on the subject of the position of the Services.

THE PROVINCIAL GOVERNMENTS.

The Public Services.

46. In the rules for recruitment Government should provide that, with due regard to efficiency, all communities should receive due representation in the public services. That is if a due representation of persons belonging to a particular community who have passed a prescribed efficiency bar can be obtained for each service, the community should receive due representation if necessary by nomination in each service. (Paragraph 104).

In the course of their comments on pages 176 to 179 the Minority recognise due representation in the services as one of the conditions necessary for the establishment of good communal relations.

As stated under recommendation no. 44, reference on this subject is invited to a memorandum separately presented to the Commission on the subject of the position of the Services.

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